OAH 48-0325-21677-CV

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Steve Abrahamson and Tim Kotzian,

Complainants,

vs.

The St. Louis County School District, Independent School District No. 2142, Bob Larson, Tom Beaudry, Darrell Bjerklie, Gary Rantala, Andrew Larson, Chet Larson, and Zelda Bruns, in their capacity as School Board Members,

Respondents.

ORDER OF DISMISSAL

TO: Eric Kaardal, Attorney at Law, Mohrman & Kaardal, P.A.; and Respondents.

On November 4, 2010, Tower Mayor Steve Abrahamson and Tim Kotzian, Chair of the Coalition for Community Schools, filed a Complaint with the Office of Administrative Hearings alleging that the St. Louis County Independent School District No. 2142 and the individual members of its School Board violated provisions of Minnesota Statutes, Chapters 211A and 211B.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 4, 2010, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on November 4, 2010.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state *prima facie* violations of Minn. Stat. §§ 211A.02, 211A.03, 211A.05, 211A.06, 211B.06 or 211B.15, subd. 9.

Based upon the Complaint and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Steve Abrahamson and Tim Kotzian against the St. Louis County School District, Independent School District No. 2142, and School Board Members Bob Larson, Tom Beaudry, Darrell

Bjerklie, Gary Rantala, Andrew Larson, Chet Larson, and Zelda Bruns is DISMISSED.

Dated: November 9, 2010

/s/ Kathleen D. Sheehy for ___
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

This Campaign Complaint concerns the December 8, 2009 special election on the St. Louis County School District's bond referendum ballot question.[1] The Complainant Steve Abrahamson is the Mayor of Tower, Minnesota, a city within the boundaries of Independent School District No. 2142; and Complainant Tim Kotzian is the Chair of an ad hoc citizens group formed to oppose the School District's restructuring plan and bonding referendum.

According to the Complaint, St. Louis County Independent School District No. 2142, through its School Board members, caused a ballot question election seeking authorization to issue general obligation school building bonds in an amount not to exceed $78.8 million. The Complaint alleges that the School District and its School Board members engaged in campaign activities in support of the ballot question that violated fair campaign practices and financial reporting laws. Specifically, the Complaint alleges that the Respondents violated Minn. Stat. §§ 211A.02 (financial report), 211A.03 (final report), 211A.05 (failure to file statement), 211A.06 (failure to keep account), 211B.06 (false campaign material), and 211B.15, subd. 9 (prohibited corporate contributions).

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.[2] For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.[3] A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.[4]

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[1] Minn. Stat. § 211B.32, subd. 2 (Campaign complaints must be filed with the Office of Administrative Hearings within one year after the occurrence of the act or failure to act that is the subject of the complaint.)
[2] *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. App. 2010).
[3] Id.
[4] Id.

The Complaint alleges that the St. Louis County School District violated campaign financial reporting laws by failing to report expenditures it made and in-kind contributions it received to promote the passage of the December 2009 ballot initiative. According to the Complaint, the School District and School Board allowed contributions, approved expenditures, and encouraged the School District to incur expenses or to otherwise accept in-kind contributions to promote the passage of the ballot question in the December 2009 election.

The Complainants argue generally that the public funds entrusted to the School District belong equally to proponents and opponents of the December 2009 ballot question and that the School District's use of funds to promote only the passage of the ballot question was an unlawful expenditure not authorized by the legislature.

Specifically, the Complaint alleges that the School District used public funds to pay Johnson Controls, Inc. to assist in the preparation and dissemination of newsletters and other materials to residents of ISD 2142 to promote the passage of the ballot question.[5] The Complaint alleges that the Respondents expended more than $750 relating to the December 2009 ballot question and that Respondents knew Minnesota law required the filing of financial reports for ballot question referendums and failed to provide those reports in violation of Minn. Stat. §§ 211A.02, 211A.03, 211A.05, and 211A.06. Additionally, the Complaint alleges that the School District and the School Board violated Minn. Stat. § 211B.06 by disseminating material that included false statements with respect to the effect of the ballot question, and that they violated Minn. Stat. § 211B.15, subd. 9, by contributing to a media project controlled by the School District to encourage passage of the ballot question.

Chapter 211A Claims

Chapter 211A is applicable to ballot questions to be voted on by voters of one or more political subdivisions but not by all the voters of the state. Section 211A.02 requires that a candidate or committee who receives contributions or makes disbursements of more than $750 in a calendar year must submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than $750 and must continue to make reports as provided in Minn. Stat. §§ 211A.03 and 211A.05 until a final report is filed. The receipt of "contributions" or the making of "disbursements" is the threshold requirement for the filing obligation. Under Minn. Stat. § 211A.06, a treasurer who fails to keep a correct account of money received for a committee "with the intent to conceal receipts or disbursements, [or] the purpose of receipts or disbursements" is guilty of a misdemeanor.

Minnesota Statutes § 211A.01 defines a "candidate" to mean, in relevant part, an individual who seeks nomination or election to a county, municipal, school district, or other political subdivision office.[6] A "committee" is defined to

[5] Complaint Exs. D-H (St. Louis County Schools Newsletters, October – December 2009).
[6] Minn. Stat. § 211A.01, subd. 3.

mean "a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question."[7]

The Complaint maintains that the School District is subject to the campaign finance reporting requirements of chapter 211A. The Complainants allege that any disbursement by the School District relating to the promotion of the ballot question is a campaign expenditure, and any in-kind contribution relating to the promotion of the ballot question is a campaign contribution. The Complainants assert further that because the Respondents promoted passage of the ballot question they must be considered a committee under Minn. Stat. § 211A.01, subd. 4. The Complainants cite to *Barry and Spano. v. St. Anthony-New Brighton Independent School District 282,*[8] in support of their claim that Respondents be considered a committee for purposes of campaign financial reporting.

In *Barry*,[9] a complaint similar to the one at hand was filed against a school district and school board members alleging that the district and board violated provisions of Chapter 211A by failing to file required financial reports relating to expenditures allegedly made to promote passage of a school bond referendum ballot questions. The complaint was dismissed by the administrative law judge on the grounds that neither the school district nor the school board met the statutory definition of a "committee." On appeal, the Minnesota Court of Appeals did not determine whether a school district and school board may be considered a corporation or association of two or more people acting together for purposes of the definition of committee. Instead, the Court affirmed the dismissal of the complaint on the grounds that it failed to allege specific facts to support its general allegation that the expenditures and communications were made to promote passage of the ballot question.[10]

In this case, the Complainants have alleged specific facts to support their claim that the Respondents disseminated publications and otherwise acted to promote passage of the December 2009 ballot question. For example, the School District disseminated newsletters to residents of the district that encouraged voters to vote yes on the ballot question and highlighted the benefits to children and families if the bond referendum were to pass.[11] Therefore, if the Respondents fall within the statutory definition of a "committee" as either a corporation or an association, the reporting requirements of chapter 211A may apply.

A school district is a political subdivision of the state, and its board members are the elected governing body for the political subdivision.[12] School

[7] Minn. Stat. § 211A.01, subd. 4.
[8] 781 N.W.2d 898 (Minn. App. 2010).
[9] 781 N.W.2d 898.
[10] 781 N.W.2d at 903.
[11] *See*, Complaint Exs. D-H (St. Louis County Schools Newsletters, October-December 2009).
[12] Minn. Stat. §§ 466.01 and 471.345 define school district as a "municipality" for purposes of Municipal Tort Liability Act and Uniform Municipal Contracting Law.

districts are classified as "public corporations."[13] They are not operated for the principal purpose of conducting a business and they do not have shareholders or publicly traded stock.[14] School board members are charged with the responsibility of managing and operating the school district. Unlike an *ad hoc* citizens group formed for the specific purpose of promoting or defeating a ballot question, school board members are the elected policy-makers for the district.[15]

Consistent with prior decisions of the OAH on this issue,[16] the Administrative Law Judge concludes that the St. Louis County School District and its Board members are neither a candidate nor a committee within the meaning of chapter 211A, and are not required to report contributions or disbursements through the reporting requirements of that chapter. As political subdivisions of the state, school districts are required to make available to the public all of their revenues, expenditures, and other financial information through mechanisms other than 211A.[17]

In addition, the Complaint alleges that the School District violated Minn. Stat. § 211A.02 because it made disbursements of more than $750 in a calendar year relating to the December 2009 ballot question. A "disbursement" means money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent. "Disbursement" does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.[18] The expenditures described in the complaint (newsletter publications and mailing costs) appear to be, at least in part, election-related expenditures.[19] School Districts are authorized to hold referendum elections for residents to approve the sale of bonds, under certain conditions and procedures. The Complainants have failed to point to any authority to support their argument that these election-related expenditures were unlawful or that the School District was prohibited from using any public funds to promote passage of the ballot question.[20]

Even if the school district were properly considered a "candidate" or "committee" subject to the filing requirements of chapter 211A, the specific expenses at issue fall within the statutory exemption for election-related expenditures and are not "disbursements" for purposes of campaign finance reporting. Accordingly, the Complaint fails to state a *prima facie* allegation that the School District violated Minn. Stat. §§ 211A.02, 211A.03, 211A.05 or 211A.06

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[13] Minn. Stat. § 123A.55.
[14] *See* Minn. Stat. § 211B.15.
[15] *See* Minn. Stat. § 121A.17.
[16] *See, Barry and Spano, v. St. Anthony-New Brighton Independent School District 282,* OAH No. 3-6326-20564-CV, Dismissal Order (May 21, 2009); and *Wigley v. Orono Public Schools,* OAH No. 3-6326-19653-CV, Prima Facie Determination (May 1, 2008).
[17] *See e.g.,* Minn. Stat. § 123B.10, subd. 1, and §§ 123B.75 - .77.
[18] Minn. Stat. § 211A.01, subd. 6.
[19] Minn. Stat. §§ 123B.63, 475.51 - .74.
[20] *See* Complaint at 5-6.

by failing to file any financial reports disclosing these disbursements. These allegations are dismissed.

Minn. Stat. § 211B.06

The Complainants also argue that the Respondents disseminated false campaign material to promote passage of the ballot question. Minn. Stat. § 211B.06 prohibits intentional participation in the preparation, dissemination, or broadcast of campaign material with respect to the effect of a ballot question that is designed to promote or defeat the ballot question, that is false and which the person knows is false or communicates to others with reckless disregard of whether it is false.

As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact and not against unfavorable deductions or inferences based on fact.[21] Moreover, the burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.[22] Finally, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.[23]

The term "reckless disregard" was added to the statute in 1998 to expressly incorporate the "actual malice" standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.[24] Based upon this standard, the complainant has the burden at the hearing to prove by clear and convincing evidence that the respondent either published the statements knowing the statements were false, or that it "in fact entertained serious doubts" as to the truth of the publication or acted "with a high degree of awareness" of its probable falsity.[25]

The Complainants argue that seven statements in various School District publications were false, inaccurate or misleading. Each statement will be considered below:

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[21] *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

[22] *Jadwin v. Minneapolis Star and Tribune Co.,* 390 N.W.2d 437, 441 (Minn. App. 1986).

[23] *Jadwin v. Minneapolis Star and Tribune Co*., 390 N.W.2d 437, 441 (Minn. App. 1986), *citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). *See also Milkovich v. Lorain Journal Co*., 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996);

[24] *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

[25] *See St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *see also Riley v. Jankowski*, 713 N.W.2d 379, 401 (Minn. App. 2006), *rev. denied* (Minn. July 20, 2006).

Statement 1:

> If residents vote no, their taxes will most likely still increase – in some, by a large amount. That's because if the plan is not approved, the school district would enter into "statutory operating debt" by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in the school district would then go to the neighboring school districts.[26]

The Complainants argue that the statement that the school district "would need to dissolve" is false because entering into statutory operating debt does not require that a school district dissolve. According to the Complaint, dozens of school districts have entered into statutory operating debt over the past 30 years and none have opted or been required to dissolve.

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to this statement. According to the statement, the State of Minnesota recognizes school districts that enter into statutory operating debt as ones that can no longer balance their expenditures and revenues, and ones that "would need to dissolve." Whether or not the State *recognizes* school districts that enter into statutory operating debt as ones that *would need* to dissolve, is not a statement that can be proven true or false. The statement reflects an inference and the phrase "would need" is at most a pessimistic possibility in a conditional sentence. The Respondents did not state that St. Louis County School District will dissolve or will be required to dissolve if it enters into statutory operating debt. The statement may be misleading or unfair but it is not demonstrably false and there is nothing in the record to show it was disseminated with a high degree of awareness of its probable falsity.

Statement 2:

> [I]f a "no" vote passes, you'll likely be paying taxes of the district shown here that's closest to your home.[27]

The Complainants argue that the statement is false and misleading because it based on the assumption that the school district will dissolve in the event of a "no" vote. In addition, the Complainants maintain that the School District did not explain the full tax consequences in the event the School District did dissolve, which, according to the Complainants, could result in a reduction in taxes.

[26] Complaint Ex. E.
[27] Complaint Ex. E.

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to this statement. The statement that voters "will likely" pay taxes of a neighboring district is an inference or unfavorable deduction based on the assumption that the school district would dissolve. It is not a factually false statement.

Statement 3:

> Projected annual deficit in 2011-12: $4.1 million.[28]

The Complainants contend that this projection was based on worst case assumptions developed through the School District's agent Johnson Controls, Inc. According to the Complaint, the budget projection was not realistic because it assumed that no teacher layoffs or staff reductions would occur, no steps would be taken to curb rising health care costs, and that energy costs would rise by 10 percent annually from record high levels in 2008.[29]

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to statement 3. To say that the Respondents' budget forecast was gloomy, unrealistic or improbable, is not to say that it was demonstrably false. There is a difference. The Fair Campaign Practices Act does not prohibit Respondents from disseminating campaign material that others regard as pessimistic or uncharitable.[30] Because nothing in the record shows that the Respondents' statements are demonstrably false, and circulated with some awareness of that falsity, they are not items that the State may reach, regulate, outlaw or punish. Whether or not Respondents' predictions are reliable are matters that are committed to the judgment and sound discernment of the voters within the St. Louis County School District.

Statement 4:

> The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district's continued operation, its implementation will provide many new opportunities for our young people's education.
>
> **Better learning spaces and materials**.
>
> Classrooms wired with advanced technology for computers, projection, recording, online learning, real-time interaction with distant learning/teaching resources, and the like.
>
> Up-to-date textbooks and learning materials.

[28] Complaint Ex. H.
[29] Complaint at 9.
[30] *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981).

Flexible laboratory spaces for sciences, shops, and technical activities.

Computer access for every student as a basic tool for learning.

Learning centered on individual students.

Personalized learning in which each student has his/her own Individual Learning Plan guiding their education.

Advisors regularly working with individual students, communicating with parents.

Enrichment and remedial programs and support available to all students geared to their Individual Learning Plans.

Learning that is growth oriented and achievement based.

Focus on life skills.

Students will graduate with mastery of key life-career skills including work skills, social skills, interpersonal interaction, basic living skills (homemaking, household/consumer finance, healthy lifestyle choices, problem solving, critical thinking, etc.)

Career exploration will be a constant factor as students create and revise their Individual Learning Plans.

The passage continues by listing "Expanded elementary level programming," "Solid core programming," and "Enhanced potential for electives," as other benefits of passage of the December 2009 ballot initiative.[31]

The Complainants contend that the entire passage under statement 4 "makes numerous specific promises for educational improvement that the district can in no way assure." The Complainants point out that under state law, none of the $78.8 million in capital bonding funds approved by voters can be used for textbooks, educational materials, teacher hiring, or new programming. The Complainants acknowledge that School District officials were claiming that operational savings made possible by the school consolidation would free up funding for such improvements. The Complainants argue, however, that the School District's projected savings were highly speculative and based on unrealistic revenue projections. In addition, the Complainants assert that the School District never explained that the potential educational improvements listed under statement 4 were contingent on these highly speculative savings and revenue increases.

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to the claims made in statement 4. As with statement 3, Respondents claims of educational improvements that will result from the passage of the ballot question may be

[31] Complaint Ex. E.

unrealistic or speculative, but that does not make them factually false. Moreover, Respondents' alleged failure to explain the speculative nature of the operational savings does not provide the basis for a complaint under Minn. Stat. § 211B.06. There is no requirement that campaign material be thorough or complete. Minnesota's appellate courts have repeatedly held that the statute is not broad enough to prohibit incomplete and unfair campaign statements, even those that are clearly misleading.[32]

Statement 5:

> "Bottom line is, if we don't pass this bond referendum we'll be putting our schools in hospice," added Board Member Gary Rantala, who represents the Babbitt-Embarrass attendance area.[33]

Statement 6:

> "Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options are close schools but don't solve any of our financial challenges. These other options are not good for young people and our entire region," said Board Chair Robert Larson.[34]

Statement 7:

> "The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, *so hopefully voters will approve the plan* [emphasis ours] and the options discussed at this study session will never have to be implemented, said Superintendent Dr. Charles Rick. Unfortunately, no matter how you look at these options if a 'no' vote prevails, the board has little choice other than to close schools and make severe program cuts. It is becoming more apparent that our children would then ultimately have to attend school in other districts."

The Complainants concede that statements 5, 6 and 7 are statements of opinion. They argue, however, that these opinions should not have appeared in School District publications paid for by tax dollars without the opposing point of view being afforded the same access.

Statements of opinion do not come within the purview of Minn. Stat. § 211B.06. In addition, there is no requirement under § 211B.06 that the Respondents present both sides of the ballot question.[35] The Administrative Law

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[32] *See Bundlie v. Christensen*, 276 N.W.2d at 71 (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute.)
[33] Complaint Ex. E.
[34] Complaint Ex. E.
[35] *See Bundlie v. Christensen*, 276 N.W.2d at 71 (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute.)

Judge finds the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to statements 5, 6 and 7.

Minn. Stat. § 211B.15, subd. 9

The Complainants also allege that the School District violated Minn. Stat. § 211B.15, subd. 9. In general, Minn. Stat. § 211B.15 prohibits corporate contributions. Subdivision 9 provides that "it is not a violation of this section for a corporation to contribute to or conduct public media projects to encourage individuals to attend precinct caucuses, register, or vote if the projects are not controlled by or operated for the advantage of a candidate, political party, or committee." Neither the School District nor its Board members meet the definition of a corporation (defined for purposes of this provision as a corporation organized for profit that does business in this state; a nonprofit corporation that carries out activities in this state; or a limited liability company that does business in this state).[36] The statute does not apply to the St. Louis County Independent School District No. 2142. Accordingly, the Complaint fails to allege a *prima facie* violation of Minn. Stat. § 211B.15, subd. 9.

For all of these reasons, the Administrative Law Judge finds that the Complainants have failed to allege *prima facie* violations of Minn. Stat. §§ 211A.02, 211A.03, 211A.05, 211A.06, 211B.06 and 211B.15 on the part of the St. Louis County School District and/or its Board members. The Complaint is dismissed in its entirety.

S.M.M.

[36] Minn. Stat. § 211B.15, subd. 1.